IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 327 of 2000

Date of decision: 31.8.2007

State of Himachal Pradesh **Appellant**

Versus

Krishan Dutt **Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. J.S.Guleria, Law Officer

For the Respondent: Mr. Janesh Gupta, Advocte

Deepak Gupta, J. (Oral)

This appeal is directed against the judgment of the learned Chief Judicial Magistrate, Solan in Criminal Case No. 62/2 of 1994, decided on 15.12.1999 whereby he has acquitted the accused of having committed an offence punishable under Section 324 IPC.

The prosecution case in brief is that on 6.10.1993 at about 7.30 p.m. at village Shamti, accused Krishan Dutt entered to the shop of complainant, Nitya Nand. There was an altercation between them which is alleged to have been witnessed by Jiya Lal and Thandi

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Ram, PWs 5 and 9 respectively. It is alleged that after the altercation the accused took out an empty bottle out of his bag, broke the same and hit the complainant on his face with this broken bottle. Immediately thereafter mother of the accused, Ram Piari, PW-3 appeared on the spot. The complainant was taken to the hospital and FIR was also lodged. Challan was put up. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 9 witnesses. The learned trial court after considering the entire evidence has come to the conclusion that the prosecution has miserably failed to prove its case and has acquitted the accused.

PW-2 Nitya Nand has supported the version which he had given in the complaint. He has stated that an injury was inflicted on his face with the broken bottle by the accused. He has specifically stated that PWs Jiya Lal and Thandi Ram were also present when the occurrence took place. In cross examination he has denied the suggestion that he sustained injury when he fell down under the influence of liquor.

The version of the complainant has been supported by his mother, PW-3. She is definitely an interested witness. However, even if this fact is

discounted, not much reliance can be placed on her statement in view of the fact that she has made material improvements in her statement in court vis-à-vis her statement recorded under Section 161 Cr.P.C. In court, she has stated that in her presence the accused had caught hold of her son and had inflicted the injuries with the bottle. This was not stated in the statement recorded under Section 161 Cr.P.C. With regard to the recovery of the bottle, this witness herself has turned hostile and has not supported the prosecution version.

As far as PW-5 Jiya Lal and PW-9, Thandi Ram, the eye witnesses are concerned, they have totally denied the incident and have not supported the prosecution version at all. Though they have been declared hostile in cross examination, but nothing has been elicited in their cross examination. The learned trial court has rightly appreciated the entire evidence. No interference is called for. There is no merit in this appeal which is accordingly dismissed. The bail bonds of the accused are discharged.

August 31, 2007(K) (Deepak Gupta), J.